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**FILED**

OCT 27 2005

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**Division of Consumer Affairs**

STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
Docket No.: 05 - 010

PETER C. HARVEY, Attorney General  
of the State of New Jersey,

Petitioner,

v.

JOSEPH GEORGE, individually and  
d/b/a AFFORDABLE ALWAYS PAVING  
and MASONRY,

Respondents.

Administrative Action

COMPLAINT

PETER C. HARVEY, Attorney General of the State of New Jersey, with offices located at  
124 Halsey Street, Fifth Floor, Newark, New Jersey by way of this Complaint states:

JURISDICTION AND PARTIES

1. Pursuant to N.J.S.A. 52:17A-4, the Attorney General of the State of New Jersey  
("Attorney General") is charged with the responsibility of enforcing the laws of the State of New  
Jersey (the "State"), including the New Jersey Consumer Fraud Act. N.J.S.A. 56:8-1 et seq.

(the“CFA”), and the regulations promulgated thereunder, N.J.A.C. 13:45A-1.1 et seq. (“Regulations”).

2. By this action, the Attorney General (“Petitioner”) seeks injunctive and other relief for violations of the CFA and the regulations promulgated thereunder. Petitioner brings this action pursuant to the authority under CFA, specifically N.J.S.A. 56:8-3.1, 56:8-8, 56:8-11, 56:8-13 and 56:8-19.

3. Upon information and belief, Joseph George (“George”) is the owner, member, agent and/or employee of Affordable Always Paving and Masonry. Upon information and belief, George’s last known and/or current home address is 54 Luxury Circle, Jackson, New Jersey 08527.

4. Upon information and belief, Affordable Always Paving and Masonry (“Affordable Paving”) is not incorporated in this State or elsewhere. Upon information and belief, Affordable Paving maintains a principal business address of 54 Luxury Circle, Jackson, New Jersey 08527. Upon information and belief, Affordable Paving also maintains business addresses of 914 N. Broad Street, Apt. 301, Elizabeth, New Jersey 07208 and 272 Kipp Street, Hackensack, New Jersey 07601.

5. George and Affordable Paving are collectively referred to as “Respondents.”

#### **GENERAL ALLEGATIONS COMMON TO ALL COUNTS**

6. Upon information and belief, at least since May 2001, Affordable Paving has been a paving and masonry company engaged in the business of performing home improvements in the State including, but not limited to, street and pavement resurfacing and driveway renovations.

7. Upon information and belief, at all relevant times, Respondents advertised and transacted business as “Affordable Always Paving and Masonry.”

8. Upon information and belief, at all relevant times, Respondents have advertised and otherwise offered its paving and masonry services for sale to consumers in this State through the Yellow Pages.

9. At least as of July 10, 2003, Respondents provide consumers who retain their services with a proposal titled "Asphalt Paving Contract", which sets forth the terms of their agreement.

10. At least as of July 10, 2003, Respondents state in bold on the front of their Asphalt Paving Contracts that "One half (of the contract) down at start of job. Balance to be paid upon completion."

11. At least as of July 10, 2003, Respondents state in their Asphalt Paving Contracts that "All material is guaranteed for one year. All work to be completed in a workmanlike manner according to standard practices."

### CONSUMER COMPLAINTS

#### Consumer Pinho

12. Upon information and belief, on or about July 10, 2003, Mr. and Mrs. Tony Pinho ("Consumer Pinho") executed an Asphalt Paving Contract with Respondents in which Respondents agreed to remove and replace Consumer Pinho's asphalt driveway for a total cost of \$1,575.00.

13. Upon information and belief, on July 17, 2003, the day Respondents began the asphalt removal, Consumer Pinho paid Respondents one-half of the contract price or \$787.50 by personal check.

14. Upon information and belief, on July 17, 2003, Respondents proceeded to remove and replace Consumer Pinho's asphalt driveway.

15. Upon information and belief, while replacing the driveway, Respondents ran out of asphalt. Respondents assured Consumer Pinho that they would return the next day with additional asphalt to complete the job.

16. Upon information and belief, Respondents failed to fulfill the Asphalt Paving Contract and failed to complete the work as prescribed under the contract. Upon information and belief, Consumer Pinho contacted Respondents and requested that they complete the driveway as agreed to under the contract. Respondents refused and responded to Consumer Pinho with profanities and threats.

17. Upon information and belief, Respondents never completed the work required under Consumer Pinho's Asphalt Paving Contract.

**Consumer Riley**

18. Upon information and belief, on or about March 10, 2005, Mr. and Mrs. Barry M. Riley ("Consumer Riley") executed an Asphalt Paving Contract with Respondents in which Respondents agreed to remove and replace Consumer Riley's concrete driveway for a total cost of \$3,200.00.

19. Upon information and belief, at the March 10, 2005 signing of the Asphalt Paving Contract, Consumer Riley paid Respondents one-half the contract price or \$1,600.00 by personal check.

20. Upon information and belief, Respondents neither began work on Consumer Riley's driveway nor returned the deposit.

21. Upon information and belief, Respondents have failed to respond to any of Consumer Riley's telephone calls and/or written correspondence.

### Consumer Arico

22. Upon information and belief, on or about March 10, 2005, Mr. Anthony Arico, III, ("Consumer Arico") executed an Asphalt Paving Contract with Respondents in which Respondents agreed to resurface Consumer Arico's driveway and add a new section to the driveway.

23. Upon information and belief, at the March 10, 2005 signing of the Asphalt Paving Contract, Consumer Arico paid Respondents the total contract price of \$3,700.00 in cash.

24. Upon information and belief, on March 25, 2005, Respondents resurfaced Consumer Arico's driveway and added a new section to the driveway. The following week, Consumer Arico informed Respondents that the driveway was coming up in several areas.

25. Upon information and belief, on numerous occasions Consumer Arico requested that Respondents return to repair the driveway, and Respondents responded with profanities and threats. Respondents failed to return to repair the driveway.

### Consumer Ngo

26. Upon information and belief, on or about May 19, 2005, Mr. and Mrs. Quan Ngo ("Consumer Ngo") executed an Asphalt Paving Contract with Respondents in which Respondents agreed to replace Consumer Ngo's driveway, curb and sidewalk for a total cost of \$7,400.00.

27. Upon information and belief, upon the May 19, 2005 signing of the Asphalt Paving Contract, Consumer Ngo paid Respondents one-half the contract price or \$3,700.00.

28. Upon information and belief, Respondents failed to fulfill the Asphalt Paving Contract and failed to complete the work prescribed under the contract. Upon information and belief, Respondents unilaterally increased the contract price after work on the project commenced.

29. Upon information and belief, Consumer Ngo contacted Respondents and requested that Respondents complete the driveway as agreed to under the contract. Respondents refused and responded to Consumer Ngo with profanities and threats.

### COUNT I

#### VIOLATIONS OF THE CFA BY RESPONDENTS (FALSE PROMISES AND MISREPRESENTATIONS)

30. Petitioner repeats and realleges the allegations contained in paragraphs 1 through 29 above as though fully set forth herein.

31. The CFA, N.J.S.A. 56:8-2, prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise....

32. In the operation of their home improvement business, Respondents have engaged in the use of unconscionable commercial practices, false promises, misrepresentations and/or the knowing concealment, suppression or omission of material facts.

33. In the operation of their home improvement business, Respondents have made false promises and/or misrepresentations including, but not limited to, the following:

- a. Misrepresenting in the home improvement contracts the start and/or completion dates for the work specified therein;
- b. Promising to return to a consumers' home to complete the home improvement contract and then failing to do so; and
- c. Accepting payments at the signing of the home improvement contract and then failing to either begin or complete the agreed upon work.

34. Each false promise and misrepresentation by Respondents constitutes a separate violation under the CFA, N.J.S.A. 56:8-2.

## COUNT II

### **VIOLATIONS OF THE CFA BY RESPONDENTS (KNOWING OMISSION OF MATERIAL FACTS)**

35. Petitioner repeats and realleges the allegations contained in paragraphs 1 through 34 above as though fully set forth herein.

36. In the operation of their home improvement business, Respondents have engaged in the knowing omission of material facts including, but not limited to:

- a. Failing to include in home improvement contracts the date or time period within which work is to commence;
- b. Failing to include in home improvement contracts the date or time period within which work will be completed; and
- c. Increasing the cost of the service to be performed under the home improvement contract and failing to discuss or inform the consumer of the same; and
- d. Failing to have any changes or revisions to home improvement contracts in writing and signed and agreed upon by all parties.

37. Each knowing omission of material fact by Respondents constitutes a separate violation under the CFA, N.J.S.A. 56:8-2.

## COUNT III

### **VIOLATIONS OF THE CFA BY RESPONDENTS (UNCONSCIONABLE COMMERCIAL PRACTICES)**

38. Petitioner repeats and realleges the allegations contained in paragraphs 1 through 37 above as though fully set forth herein.

39. In the operation of their home improvement business, Respondents have engaged in unconscionable commercial practices including, but not limited to:

- a. Failing to begin or complete the agreed upon work specified in home the improvement contracts;
- b. Failing to complete the work specified in home improvement contracts;
- c. Failing to provide consumers with a time period within which the agreed upon work specified in the home improvement contracts will be commenced and/or completed;
- d. Accepting payment for work that Respondents never commenced;
- e. Accepting payment for work that Respondents never completed;
- f. Failing to include all changes in the terms and conditions of home improvement contracts in writing;
- g. Increasing the price of the home improvement contract without contacting or discussing the increase with the consumer;
- h. Failing to provide consumers with refunds for work under the home improvement contracts that Respondents never commenced and/or completed;
- i. Performing work in a faulty manner or not at all;
- j. Failing to respond to consumers' telephone calls and/or written correspondence in a timely manner or at all;
- k. Failing to uphold the one (1) year guarantee on work performed under home improvement contract; and
- l. Responding to consumers' requests for repairs and/or completion of the home improvement contract in an unprofessional manner and with verbal threats.

40. Each unconscionable commercial practice by Respondents constitutes a separate violation under the CFA, N.J.S.A. 56:8-2.



#### COUNT IV

#### VIOLATIONS OF THE HOME IMPROVEMENT PRACTICES REGULATIONS BY RESPONDENTS

41. Petitioner repeats and realleges the allegations contained paragraphs 1 through 40 above as though fully set forth herein.

42. The Regulations Governing Home Improvement Practices, N.J.A.C. 13:45A-16.1 et seq. ("Home Improvement Regulations"), promulgated pursuant to the CFA, among other things, prohibit certain acts and practices of a seller in connection with the sale, advertisement or performance of home improvement contracts.

43. Respondents are "seller[s]" within the definition of N.J.A.C. 13:45A-16.1.

44. The Home Improvement Regulations provide, in pertinent part, that certain acts and practices concerning the performance of home improvement contracts shall be unlawful:

##### 7. Performance

.....

- ii. Fail to begin or complete work on the date or within the time period specified in the home improvement contract, or as otherwise represented, unless the delay is for reason of labor stoppage; unavailability of supplies or materials, unavoidable casualties, or any other cause beyond the seller's control. Any changes in the dates or time periods stated in a written contract shall be agreed to in writing; or
- iii. Fail to give timely written notice to the buyer of reasons beyond the seller's control for any delay in performance, and when the work will begin or be completed.

[N.J.A.C. 13:45A16.2(a)(7)(ii)(iii).]

45. The Home Improvement Regulations also include a writing requirement for contracts priced in excess of \$200.00 and provide, in pertinent part:

12. Home improvement contract requirements-writing requirement: All home improvement contracts for a purchase price in excess of \$200.00, and all changes in the terms and conditions thereof shall be in writing. Home improvement contracts which are required by this subsection to be in writing, and all changes in the terms and conditions thereof, shall be signed by all parties thereto, and shall clearly and accurately set forth in legible form and understandable language all terms and conditions of the contract, including, but not limited to, the following:

....

- ii. A description of the work to be done and the principal products and materials to be used or installed in performance of the contract. The description shall include, where applicable, the name, make, size, capacity, model, and model year of principal products or fixtures to be installed, and the type, grade, quality, size or quantity of principal building or construction material to be used.

....

- iv. The dates or time period on or within which the work is to begin and be completed by the seller;

....

[N.J.A.C. 13:45A-16.2(a)(12)(ii),(iv).]

46. Respondents violated the Home Improvement Regulations by engaging in certain conduct including, but not limited to:

- a. Failing to include in home improvement contracts the dates or time periods on or within which the work is to commence;
- b. Failing to include in home improvement contracts the dates or time period on or within which the work is to be completed;
- c. Failing to include all changes in the terms and conditions of home improvement contracts in writing;

- d. Failing to obtain consumers' written consent to any changes in the price and/or cost under the home improvement contract; and
  - e. Failing to provide consumers with timely written notice of a delay in the commencement or completion of home improvement contracts.
47. Respondents' conduct constitutes multiple violations of the Home Improvement Regulations, N.J.A.C. 13:45A-1.1 et seq., each of which constitutes a per se violation of the CFA, N.J.S.A. 56:8-1 et seq.

### PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegations, Petitioner respectfully requests the entry of an Order after a hearing as authorized by the CFA, N.J.S.A. 56:8-3.1:

- (a) Finding that the acts and omissions of Respondents constitute multiple instances of unlawful practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., and the Regulations promulgated thereunder, specifically the Home Improvement Regulations, N.J.A.C. 13:45A-16.1 et seq.;
- (b) Permanently enjoining Respondents and their owners, agents, employees and representatives and all other persons or entities directly under their control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., the Home Improvement Regulations, N.J.A.C. 13:45A-16.1 et seq., including, but not limited to, the acts and practices alleged in this Complaint;
- (c) Directing the assessment of restitution amounts against Respondents, jointly and severally, to restore to any affected person, whether or not named in this Complaint, any money or real or personal property acquired by means of any alleged practice herein to be unlawful and found to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8;
- (d) Assessing the maximum statutory civil penalties against Respondents, jointly and severally, for each and every violation of the CFA, in accordance with N.J.S.A. 56:8-13;

- (e) Directing the assessment of costs and fees, including attorney's fees, against Respondents, jointly and severally, for the use of the State of New Jersey, as authorized by the CFA, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19; and
- (f) Granting such other relief as the interests of justice may require.

PETER C. HARVEY  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Petitioner

By: \_\_\_\_\_

Jeremy S. Crawford  
Deputy Attorney General

Dated: October 27, 2005  
Newark, New Jersey